LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 19 1963
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 23.

B. A. REYNOLDS, ETC., ET AL.,
Appellants,

versus

M. O. SIMS, ET AL.,
Appellees.

No. 27.

DAVID J. VANN AND ROBERT S. VANCE,
Appellants,

versus

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

No. 41.

JOHN W. McCONNELL, JR., ET AL.,
Appellants,

versus

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

Appeals from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF FOR APPELLANTS, B. A. REYNOLDS, ETC., ET AL.

THOMAS G. GAYLE,
1104½ Water Avenue,
Selma, Alabama,

JOSEPH E. WILKINSON, JR.,
310 Broad Street,
Selma, Alabama,

McLEAN PITTS,
16 Broad Street,
Selma, Alabama,

RANKIN FITE,
Hamilton, Alabama,

ATTORNEYS FOR APPELLANTS, B. A. REYNOLDS, ET AL., IN CASE No. 23.

SUBJECT INDEX.

	Page
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
THE QUESTIONS PRESENTED FOR REVIEW	14
STATEMENT OF THE CASE	15
SUMMARY OF ARGUMENT	29
ARGUMENT	30
CONCLUSION	42
APPENDIX 1—Federal Statutes Involved	45
APPENDIX 2—Constitutional Provisions	48
APPENDIX 3—Table of States Apportioned Under Provisions Requiring One Senator per District or limiting a Senatorial District to one Senator	49
APPENDIX 4—Comparison: House Apportionment Under Provisions of Act No. 91; Method of Equal Proportions; and Method of Smallest Divisors	51
APPENDIX 6—Table of Ten Industrial Counties showing City Population as per cent of Total County Population	52

TABLE OF CASES CITED.

Page

Baker v. Carr; 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d. 663 ..... 2, 29, 30, 31, 32, 34, 40, 41, 42

Colegrove v. Green, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 31

Ex parte Collins, 277 U. S. 565, 48 S. Ct. 585, 72 L.Ed. 990 2

Ex parte Public National Bank, 278 U.S. 101, 49 S.Ct. 43, 73 L. Ed. 202 2

MacDougall v. Green, 335 U. S. 281, 69 S.Ct. 1, 93 L.Ed. 3 ..... 31, 36

Oklahoma Gas and Electric Co. v. Oklahoma Packing Co., 292 U.S. 386, 54 S. Ct. 732, 78 L.Ed. 1318 2

Opinion of the Justices, 263 Ala. 158, 81 So. 2d 881 37

Palmetto Fire Ins. Co. v. Conn., 272 U. S. 295, 47 S. Ct. 88, 71 L. Ed. 243 2

Sims vs. Frink, 208 F. Supp. 431 1

South v. Peters, 339 U.S. 276, 70 S. Ct. 641, 94 L. Ed. 834 ..... 31, 36

STATUTES AND CONSTITUTIONAL PROVISIONS.

Act No. 93 (Senate Bill 29) Alabama Legislature, 67 Senator Amendment 7, 15, 20, 21

Act No. 91 (House Bill 59) Crawford-Webb Bill 9, 15, 20, 21

1901 Constitution of Alabama, Sections 42, 43, 44, 284 6

1901 Constitution of Alabama, Section 50 3

1901 Constitution of Alabama, Sections 197, 198, 199 ..... 3, 4, 21

1901 Constitution of Alabama, Section 200 ..... 4, 21

1901 Constitution of Alabama, Section 201 ..... 5, 21

Page

1901 Constitution of Alabama, Sections 202, 203 ..... 5, 14, 16, 24

Fourteenth Amendment, Constitution of U. S. 13, 14, 15, 16, 31

Title 32, 1940 Alabama Code, Sections 1, 2 .. 12, 14, 16, 24

Title 28, U.S.C. Section 1253 2

Title 28, U.S.C. Section 2201 ..... 2, 13, 16

Title 28, U.S.C. Section 1343 (3), (4) 2, 13

Title 42, U.S.C. Sections 1983, 1988 ..... 2, 13

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 23.

B. A. REYNOLDS, ETC., ET AL.,
Appellants,

versus

M. O. SIMS, ET AL.,
Appellees.

Appeals from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF FOR APPELLANTS, B. A. REYNOLDS, ETC., ET AL.

OPINION BELOW.

The opinion of the District Court for the Middle District of Alabama, is reported as *Sims vs. Frink*, 208 F. Supp. 431. A preliminary opinion entered April 14, 1962, is reported at 205 F. Supp. 245.

JURISDICTION.

(a) This suit was brought under 28 U. S. C. § 1343 (3) and (4) (62 Stat. L. 932, as amended); 42 U. S. C. § 1983 and § 1988 (17 Stat. L. 13 and 16 Stat. L. 144, as amended); and 28 U. S. C. § 2201 (62 Stat. L. 964; as amended 72 Stat. L. 349), seeking to have certain statutes and acts of The Legislature relating to the reapportionment of the Legislature of Alabama declared unconstitutional, and for injunctive relief. The judgment of the District Court was entered on July 25th, 1962 and notice of appeal was filed in that Court on August 17th, 1962. The jurisdictional statement was filed in this Court on October 12th, 1962, and the Court noted probable jurisdiction on June 10th, 1963. The jurisdiction of the Supreme Court by direct appeal is conferred by Title 28, U. S. C., Section 1253 (62 Stat. L. 926).

(b) The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Baker v. Carr*, 82 S. Ct. 691 (1962), *Palmetto Fire Ins. Co. v. Conn.*, 272 U. S. 295, 47 S. Ct. 88; *Oklahoma Gas and Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, 54 S. Ct. 732; *Ex parte Public National Bank*, 278 U. S. 101, 49 S. Ct. 43; *Ex parte Collins*, 277 U. S. 565, 48 S. Ct. 585.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The following Sections of the Alabama Constitution of 1901 prescribe the number of members of the Senate and House of Representatives of the Legislature of Alabama and method of apportioning the members of the Legislature among the Counties of the State:

> Art. 4, Sec. 50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the several districts and counties as prescribed in this Constitution; provided that in addition to the above number of Representatives each new county hereafter created shall be entitled to one Representative. Vol. 1, p. 109, Code of Alabama 1940.

> Art. 9, Sec. 197. The whole number of Senators shall be not less than one-fourth, or more than one-third of the whole number of Representatives. Vol. 1, p. 202, Code of Alabama 1940.

> Art. 9, Sec. 198. The House of Representatives shall consist of not more than one hundred and five members unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States, which apportionment when made shall not be subject to alteration until

the next session of the Legislature after the next decennial census of the United States shall have been taken. Vol. 1, p. 202, Code of Alabama 1940.

Art. 9, Sec. 199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives, and apportion them among the several counties of the state, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative. Vol. 1, p. 202, Code of Alabama 1940.

Art. 9, Sec. 200. It shall be the duty of the Legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators and to divide the State into as many Senatorial districts as there are Senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No County shall be divided between two districts, and no district shall be made up of two or more counties not contiguous

to each other. Vol. 1, p. 202, Code of Alabama 1940.

Art. 9, Sec. 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this state, be not full and satisfactory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article. Vol. 1, p. 203, Code of Alabama 1940.

Art. 9, Sec. 202. Until the legislature shall make an apportionment of representatives among the several counties, as provided in the preceding section, the counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, St. Clair, Shelby, Washington, and Winston, shall each have one representative; the counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Wilcox, shall each have two representatives; the counties of Dallas and Mobile shall each have three representatives; the county of Montgomery shall have four representatives;

and the county of Jefferson shall have seven representatives. Vol. 1, p. 203, Code of Alabama 1940.

Art. 18, Sec. 284 . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment. Vol. 1, p. 287, Code of Alabama 1940.

Sections 42 and 43 of Art. 3 of the Constitution of 1901 and Section 44 of Art. 4 read as follows:

Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments; each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. Vol. 1, p. 88, Code of Alabama 1940.

Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men. Vol. 1, p. 91, Code of Alabama 1940.

Section 44. The legislative power of this state shall be vested in a legislature, which shall consist

of a senate and a house of representatives. Vol. 1, p. 92, Code of Alabama 1940.

The following statutes were declared unconstitutional in this suit:

Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment" proposing an amendment to the Constitution of Alabama relating to Legislative apportionment as passed in the 1962 Special Session of the Legislature of Alabama, (Acts of Alabama, Special Session 1962, p. 124) which reads as follows:

> An Act, proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: Section 1. The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: Proposed Amendment 1. The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the

state shall elect such number of representatives as may be apportioned to the county as follows: The County of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. Section 2. An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election

shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature of Alabama (Acts of Alabama, Special Session 1962, p. 121) and approved by the Governor of the State of Alabama on July 12th, 1962 is as follows:

An Act, to fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay

and Cleburne; thirty-fifth, the counties of Henry and Houston. In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such district shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4, the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each, the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each, and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of Senators and Representatives at the general election to be held in November, 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Also Sections 1 and 2 of Title 32 of the 1940 Code of Alabama which are as follows:

(1) House of Representatives. The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows: The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, Shelby, St. Clair, Washington and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three representatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.

(2) Senatorial Districts. The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial districts, as follows: First, Lauderdale and Lime-

stone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; Twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw, and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and DeKalb; thirtieth, Dallas; thirty-first, Colbert, Franklin and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston.

The following federal statutes are involved:

28 U. S. C. §1343 (3) and (4) (62 Stat. L. 932, as amended); 42 U. S. C. §1983 and §1988 (17 Stat. L. 13 and 16 Stat. L. 144, as amended); and 28 U. S. C. §2201 (62 Stat. L. 964, as amended 72 Stat. L. 349), which are set forth in Appendix "1" *infra* at page 45. The United States Constitution, Amendment Fourteen, Sections 1 and 2, which are set forth in Appendix "2" *infra* at page 48.

THE QUESTIONS PRESENTED FOR REVIEW.

1. Ought the three-judge District Court to have exercised jurisdiction in this cause?

2. Does the Federal District Court have constitutional power to reapportion the Legislature of Alabama by affirmative action?

3. Does Article IV of the Constitution of the United States prohibit a Federal Court from asserting power and authority over a state legislature?

4. Was the apportionment of both Houses of the Legislature of the State of Alabama (which apportionment was pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

5. Were the appellees in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

6. Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

7. Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

8. Is Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment", proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

9. Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama, on July 12, 1962, an unconstitutional act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

10. How rapidly should the Courts move to remedy Legislature malapportionments?

STATEMENT OF THE CASE.

This is an appeal by B. A. Reynolds as Judge of Probate of Dallas County, Alabama and Frank Pearce as Judge of Probate of Marion County, Alabama, two of the Probate Judges who as a class were Defendants in

the Court below and against whom a decree was rendered adjudging and decreeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama by judicial decree, and in ordering and enjoining these Appellants and the other Defendants in said suit from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature. R. 197.

The appellees, as individuals and as voters and tax payers of the State of Alabama, on their behalf and others similarly situated, sued Bettye Frink, as Secretary of State of the State of Alabama, the sixty-seven Probate Judges of the State, and other officials who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature. The suit alleged a denial of the equal protection of the law as preserved under the Fourteenth Amendment to the Constitution of the United States because of the failure of the Legislature of Alabama to reapportion legislative districts on the basis of population as provided by the State Constitution. R. 1.

Appellees in their said suit prayed for a declaration of rights pursuant to 28 U. S. C. Sec. 2201, 58 Stat. L. 890, and that the apportionment of the Legislature as established under Secs. 1 and 2 of Title 32 of the Alabama Code of 1940, as amended and Secs. 202 and 203 of Article 9 of the Constitution of Alabama 1901 be declared void and invalid as being contrary to the duty

of the State of Alabama to reapportion the Legislature, and because of the failure to reapportion the Legislature in accordance with the present population of the state; R. 26-27, that each of the defendants named in the complaint who had duties to perform in connection with the nomination and election of members of the Legislature be enjoined and restrained from exercising such duties until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of the Constitution of Alabama; they further prayed that the Court should require the next primary and general elections for members of the Alabama Legislature be held on an at-large basis. R. 27-32.

The Attorney General of the State of Alabama and Bettye Frink, Secretary of State of the State of Alabama answered the complaint in which they alleged among other things that: 1. The Court lacks jurisdiction of the subject matter. 2. The Complaint fails to state a claim upon which relief can be granted against this Defendant. One of the Probate Judges moved to dismiss the Complaint on the same ground. R. 40-43.

On March 29th, 1962, appellees filed a motion for preliminary injunction praying that the defendants be enjoined from failing or refusing to prepare the necessary ballots to be used in the Democratic Primary Election in May, and in the general election in November, 1962, in such a manner as would require the election of members of both the House of Representatives and the Senate of the State of Alabama on an

at-large basis, and to take whatever further action was necessary to insure that all candidates for party nomination for election to the Legislature run at large throughout the State. R. 47.

By its order dated March 30th, 1962, the application for interlocutory injunction was assigned for hearing on April 14th, 1962, R. 57, and was thereafter continued until July 16th, 1962. In the order dated April 14th, 1962 the Court made the following remarks: R. 62.

> "We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in the complaint; and no ruling before the primary elections of May 1962 appears essential.
>
> "The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a.m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.
>
> "For the guidance of counsel and for such aid as we may be in solving the troublesome but im-

portant subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in Baker v. Carr, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes." R. 62.

On June 28th, 1962, the appellees amended their complaint by asking in their prayer for relief that the Court enter an order provisionally reapportioning the house of representatives of Alabama and provisionally redistricting the senate of Alabama and in such order start with existing apportionment of the members of the house of representatives and existing senatorial districts, alter or consolidate some of them, and award the seats thus released to those counties suffering discrimination. R. 69. On the same day certain intervening plaintiffs amended the prayer for relief in their complaint by asking the Court to require that the members of the house of representatives of the State of Alabama be elected in the November general elections according to a plan which they submitted to the Court in their amendment. R. 71.

After the Court's order of March 30th, 1962, the Governor of Alabama called a special session of the Legislature to consider reapportioning the legislature of Alabama and on July 12th, 1962, the legislature

passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment", this proposed constitutional amendment being subject to ratification of the voters of Alabama in an election to be held in November, 1962. R. 157. On the same date the Governor of Alabama signed into law the "Crawford-Webb Bill", which was to take effect in the event the voters of Alabama refused to ratify the proposed "67-Senator Amendment". R. 160. Both of these acts provided for the reapportionment of the legislature of the state of Alabama.

On July 13th, one day after the passage of said acts the Secretary of State of the State of Alabama amended her answer and alleged the following:

> "A. Since the filing of this suit and before July 16, 1962, the Legislature of Alabama has passed two acts relating to reapportionment of its membership. (Same acts above referred to as "67-Senator Amendment" and the "Crawford-Webb Bill" R. 157, R. 160.)
>
> B. The said acts have now rendered the plaintiffs' and intervenors' complaints as ones which do not present a claim upon which relief may be granted.
>
> C. The said acts have caused this case to present matters which have become moot and the suit is subject to dismissal by the Court.
>
> D. The said acts comply with all constitutional standards subject to Federal jurisdiction, but if

this defendant is mistaken she respectfully requests the Court for further guidance as to what specific action the Legislature must take in order to comply with the Court's order of April 14, 1962. In this connection defendant avers that the present Legislature is in recess and another will be elected in November 1962.

E. Defendant avers that compliance with constitutional standards, if not now met, may be met by the Legislature if it knows specifically what the Court requires." R. 106.

On said date, the Attorney General of the State of Alabama likewise filed an answer in which he alleged that the two Acts above referred to, namely: the "67-Senator Amendment" and the "Crawford-Webb Bill" meet the constitutional standards referred to by the Court in its order of April 14th, 1962. That the Constitutional Convention of 1901 placed in the organic law Secs. 197, 198, 199, 200 and 201 of Art. 9 of the Constitution of 1901 and that these sections render it impossible to apportion both Houses or either House on a strictly population basis. In his said answer he also alleged the following:

"That by Art. 9, Constitution of Alabama 1901, and subsequent statutes, the House consists of 106 members and the Senate 35; that the whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives; that the State is to be divided into as many senatorial districts as there are senators, which districts shall be as nearly equal to each

other in the number of inhabitants as may be; each district to have one senator and no more; no county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Jefferson County has always been considered as a separate senatorial district. According to the last Federal Census, it has a population of 634,864. The state population is 3,266,740, roughly five times the population of Jefferson. To fix districts on the basis of population considering Jefferson County as a separate district there could be only five in all and five senators in all. Since the number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives, twenty house members would be required for a five member senate. This cannot be, however, because each county is entitled to one representative, sixty-seven in all. . . .

That the acts were passed in good faith after careful and deliberate consideration by both the Senate and House, and in the context of this case present a rational plan involving no invidious discrimination". R. 107-110.

Some nine days after the passage of said Acts and on July 21st, 1962, the District Court filed its opinion in this case, R. 137, and on July 25th, 1962, thirteen days after the passage of said reapportionment statutes by the Alabama Legislature, filed its decree in this case, and declared said statutes unconstitutional and by its decree proceeded to reapportion the legis-

lature of Alabama. R. 173. In said decree the Court held:

(1) That the plaintiffs, as citizens of the United States and of the State of Alabama, are denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself as required by law.

(2) That the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§1 and 2, Title 32, Code of Alabama) constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(4) That Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(5) That Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill"), both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, are each void, invalid and ineffective to the extent that they attempt to correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. R. 174-175.

The Court in its said decree then enjoined the Appellants, and the other officers of the State of Alabama who were charged with certain duties pertaining to elections in Alabama "from furnishing forms for nominations, from receiving nominations, petitions and papers, from certifying nominations, nominees, or elections, and from any other act necessary to the holding of elections, including primary elections, for members of the Alabama Legislature in districts as established by Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901, and §§ 1 and 2, Title 32, Code of Ala-

bama, except in accordance with the order and opinion of this Court filed herein on July 21, 1962 and except and in accordance with the apportionment of the Alabama Legislature as hereinafter specifically set out." R. 177.

The Court then proceeded to reapportion the State of Alabama and decreed:

> "(1) That the membership of the House of Repsentatives for the State of Alabama, effective on the day after the general election to be held in November, 1962, be and the same is hereby apportioned as follows:
>
> The County of Jefferson shall have and elect seventeen representatives; the County of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the Counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the Counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the State of Alabama shall each have and elect one representative."
>
> (2) That the Senate of the State of Alabama be and the same is hereby apportioned as follows:
>
> First District: The Counties of Lauderdale and Limestone.
>
> Second District: The Counties of Lawrence and Morgan.

Third District: The Counties of Cullman and Winston.

Fourth District: The County of Madison.

Fifth District: The Counties of Jackson and Marshall.

Sixth District: The County of Etowah.

Seventh District: The County of Calhoun.

Eighth District: The County of Talladega.

Ninth District: The Counties of Randolph and Chambers.

Tenth District: The Counties of Elmore and Tallapoosa.

Eleventh District: The County of Tuscaloosa.

Twelfth District: The Counties of Fayette and Walker.

Thirteenth District: The County of Jefferson.

Fourteenth District: The Counties of Pickens and Lamar.

Fifteenth District: The Counties of Autauga, Chilton and Shelby.

Sixteenth District: The Counties of Monroe and Wilcox.

Seventeenth District: The Counties of Butler, Covington and Conecuh.

Eighteenth District: The Counties of Bibb and Perry.

Nineteenth District: The Counties of Clarke, Choctaw and Washington.

Twentieth District: The Counties of Marengo and Sumter.

Twenty-first District: The Counties of Baldwin and Escambia.

Twenty-second District: The Counties of Blount and Saint Clair.

Twenty-third District: The Counties of Dale and Geneva.

Twenty-fourth District: The Counties of Barbour and Pike.

Twenty-fifth District: The Counties of Coffee and Crenshaw.

Twenty-sixth District: The Counties of Bullock and Macon.

Twenty-seventh District: The Counties of Lee and Russell.

Twenty-eighth District: The County of Montgomery.

Twenty-ninth District: The Counties of Cherokee and DeKalb.

Thirtieth District: The Counties of Dallas and Lowndes.

Thirty-first District: The Counties of Colbert, Franklin and Marion.

Thirty-second District: The Counties of Greene and Hale.

Thirty-third District: The County of Mobile.

Thirty-fourth District: The Counties of Coosa, Clay and Cleburne.

Thirty-fifth District: The Counties of Henry and Houston. R. 177-179.

The Court, in its said decree, further ordered and decreed that the apportionment of the Alabama Legislature should be effective upon the filing of the decree and ordered, directed and enjoined the Secretary of the State of Alabama, the sixty-seven Probate Judges of the State, including appellants, and other officials who were defendants in the case and who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature to select and nominate and provide for the election to be held in November, 1962, of the members of the House

of Representatives and members of the Senate for the State of Alabama in accordance with the foregoing apportionment. R. 179-191.

This appeal is from the final decree, pursuant to 28 U.S.C. Sec. 1253. Probable jurisdiction was noted June 10, 1963.

SUMMARY OF ARGUMENT.

Legislative reapportionment should be resolved without federal interference. This Court should reconsider its decision in *Baker v. Carr*, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, and return to the original constitutional proposition that courts do not interfere with the political structure of state governments.

Even under the decision of this Court in *Baker v. Carr*, the District Court should not have retained jurisdiction in this case, because the factual situation in the case at bar is different from the one considered in the Tennessee case. In Alabama the apportionment of the Legislature is based on a population rather than a voter basis and the number of seats in the House are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. The apportionment of the State Senate is limited to 35 members and is divided into two senatorial districts according to population and the Constitution provides that "no county shall be divided into two districts,

and no district shall be made up of two or more counties not contiguous to each other".

Unlike the Tennessee case, while this suit was pending, the Alabama Legislature passed two acts—one of which was patterned after the Congress, was called the "67-Senator Act" and provided for a constitutional amendment by which each county of the state was to have one senator, and after providing for one member of the House for each county of the state as required under the Alabama Constitution, the remaining members of the House were to be apportioned on a population basis—the other act passed by the Legislature was called the "Crawford-Webb Act" and was to take effect in the event the proposed constitutional amendment was not passed by a vote of the people of the state.

Neither one of said acts were invidious *per se*, but were based on rational state policy. Both of said acts were valid and constitutional acts of the Legislature and should not have been declared unconstitutional by the District Court.

In no event should the District Court have reapportioned the Legislature by affirmative action.

ARGUMENT.

The suit in this case is patterned after the suit brought by the voters of the State of Tennessee and decided by this Court in *Baker v. Carr*, 82 S. Ct. 691.

In the Tennessee case the plaintiffs, as in this case, claim that they were denied the equal protection of the law accorded them by the 14th Amendment of the Constitution of the United States by virtue of the debasement of their vote. A three judge district court dismissed the complaint and held it lacked jurisdiction of the subject matter. On appeal in *Baker v. Carr, supra*, this court reversed the case and merely held: "(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) * * * that the appellants have standing to challenge the Tennessee Apportionment Statutes". Mr. Justice Frankfurter and Mr. Justice Harlan dissented and wrote separate opinions. The District Court of Tennessee did not reach the merits of that claim and the Supreme Court expressed no view on the merits. Prior to *Baker v. Carr, supra*, the Supreme Court had consistently ruled that apportionment of congress or state legislatures was a political question and refused to assume jurisdiction in such cases. Illustrative of this are the cases of *Colegrove v. Green*, 328 U.S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432; *MacDougall v. Green*, 335 U.S. 281, 69 S. Ct. 1, 93 L. Ed. 3; *South v. Peters*, 339 U.S. 276, 70 S. Ct. 641, 94 L. Ed. 834.

That the legislative powers of the people can be organized according to the dictates of a federal judiciary is in violation of the doctrine that the government shall be composed of the executive, legislative and judicial branches, each of whom should exercise separate, but

equal, powers. A federal judiciary that can dictate the organization of a state legislature can indirectly dictate the organization of the United States Congress because seats in its House of Representatives are districted and redistricted by act of state legislature. Legislative reapportionment should be resolved without federal interference.

The case at bar is illustrative of the confusion which can result from interference by the federal judiciary following the decision in *Baker v. Carr, supra.*

The soundness of the majority opinion in *Baker v. Carr,* has been questioned by members of the bar, courts and students of government and for that reason we urge the court to reconsider its decision in that case and return to the original constitutional proposition that courts do not interfere with the political structure of state government.

Even under the decision in *Baker v. Carr,* the district court should not have retained jurisdiction in this case because the factual situation in the case at bar is different from the one considered in the Tennessee case in the following respects:

Under the Tennessee Constitution, (Secs. 5 & 6) the apportionment of the house and senate was to make among the several counties or districts according to the number of qualified voters in each. In Alabama the apportionment of the legislature is based on a population rather than a voter basis, and the number

of seats in the house are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. Sections 197, 198 and 199 Alabama Constitution 1901. The apportionment of the state senate is limited to 35 senators and is divided into senatorial districts according to population and the constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other."—Sec. 200 of the Constitution of Alabama 1901.

Unlike the Tennessee Legislature which had not acted on reapportionment since the year, 1901, the Alabama Legislature while this suit was pending in an extraordinary session called by the Governor passed two acts, one of which was Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment". This act proposed an amendment to the Constitution of Alabama relating to legislative apportionment which was to be submitted to a vote of the people and was declared by the lower Court to be an unconstitutional proposal within the meaning of the Equal Protection Provisions of the Fourteenth Amendment to the Constitution of the United States. The other act being Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", was likewise declared by the District Court to be an unconstitutional act within the meaning of the Equal Protection Clause of the Constitution.

Both of said acts were declared to be, "void, invalid, and ineffective" to the extent that they attempt to correct the denial of plaintiffs' rights, said denial arising

from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. While the Court declared both of the aforesaid acts unconstitutional, in our opinion both of said acts were constitutional and valid reapportionment acts of the Legislature as we will subsequently point out in this brief.

After declaring said acts unconstitutional, the lower Court then assumed the duties of the Legislature, mapped the political structure of the state, and apportioned the Legislature by Judicial Decree according to its own views, all of which was hurriedly done in a period of some thirteen days.

The District Court's Decree reapportioning the Legislature was entered subsequent to the Democratic Primary in May and prior to the General Election to be held in November, 1962.

In *Baker v. Carr,* the District Court was not called on to "re-map" the state, or to hurriedly provide relief in the face of an impending election, and in that case appellants suggested a step-by-step approach, which did not involve an assumption by the District Court of legislative duties or responsibilities. (taken from page 20 of appellant's brief in *Baker v. Carr.)*

Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the legislature was to be submitted to a vote of the people of the state?

The proposed 67-Senator Act which was to be submitted to a vote of the people of the state was framed after the Federal System of government—namely one senator in each county of the state. The District Court in its decree accepted as completely satisfactory the provisions of this act as it relates to House reapportionment by the method of equal proportion. We will therefore discuss the merit of the 67-Senator Amendment as it relates to senatorial redistricting.

It is at once essential to recognize the basic issue involved here. It relates solely to the right of a state to structure its Legislature in accordance with provisions which it considers in the best interest of the state at large.

In declaring the proposed 67-Senator Amendment invalid, the District Court concluded as a matter of law that the people of this state cannot by Constitutional amendment or by Constitutional convention alter the basic structure of its Legislature. If unit representation in the Senate is invidious *per se*, then it would be futile to resort to convention to so provide.

In at least nine states today county or town units are given equal representation in the Legislative branch regardless of the number of each unit's inhabitants.

Among fourteen states it is required that there be one Senator for each district or else limit a district to one Senator.

There are twenty states in which each county or town unit is entitled to one representative in the Lower House. See Appendix "3" *infra* at page 49.

If the 67-Senate provision is not invidious *per se*, can it be said that it is invidious as being based on no rational policy? In this connection we would point out that there is nothing in the Federal Constitution to prevent a state acting not irrationally from choosing any electoral Legislative structure it thinks best suited to the interest, temper, and customs of its people. *MacDougall v. Green*, 335 U. S. 281, in which the Court observed that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government, and reaffirmed by *South v. Peters*, 339 U. S. 276.

It may be said that it results in gross inequality but even gross inequality may be justified if based upon a permissible state policy and is not arbitrarily and capriciously applied.

If it can be determined that the 67-Senate Amendment rests upon a permissible policy the function of the Federal judiciary ends upon such determination. We refer to Appendix 5 indicating the manner in which seven counties characterized by industrialization and fifty per cent or better of their population is represented by single or contiguous cities. It is submitted that such concentration of Legislative power into the hands of the industrial community of this state to the

extent of forty-one representatives represents a potential power of control in the House of Representatives such as to prevent submission of Constitutional amendments to the people. The power thus represented when exercised as a "stranglehold" can be sufficiently disruptive and obstructive as to prevent, if not in fact control, the distribution of revenues and the removal of agricultural tax exemptions to the detriment of all the people of Alabama.

Unless the people of Alabama are permitted to structure their Legislature in a manner to provide protection from the domination of a handful of cities, then the Court has as a matter of law asserted final authority and control over matters which properly should remain for Legislative and not judicial determination.

The Supreme Court of Alabama in Opinion of Justices 61 So. 2d 881, (1955), by a divided Court, held that notwithstanding the provisions of 284 of the Constitution the people could "legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

It is respectively submitted that the 67-Senator Act was a valid and constitutional act of the Legislature and should be submitted to a vote of the people.

Should the District Court have declared unconstitutional the Crawford-Webb Act of the Legislature?

With *Baker v. Carr* in mind, let us now examine the method of apportionment of the Alabama Legislature employed in this act.

It will be observed by reference to Appendix "4" *infra* at page 51, that the House apportionment provided by the Crawford-Webb Act is the method of smallest divisors with this minor exception two seats, which would ordinarily be apportioned to Jefferson County and one seat which would ordinarily be apportioned to Mobile County, have instead been apportioned one each to Russell, Cullman and Colbert Counties.

While the method of apportionment employed in the Crawford-Webb Act is not stated in the act, nor need it have been so stated, it is nevertheless obvious. The classifications used were reasonable, logical, rational and were designed to carry out unquestioned state policy of allocating State Legislative power in a manner to prevent unwholesome concentration of power. The population classifications upon which the Crawford-Webb Act is based, are as follows:

After providing one representative to each county, as provided for in the Constitution, the balance of thirty-nine House seats were apportioned according to population by classification:

Counties	45,000— 90,000	1 additional seat
Counties	90,000—150,000	2 additional seats
Counties	150,000—300,000	3 additional seats
Counties	300,000—600,000	5 additional seats
Counties	600,000 and over	11 additional seats

An apportionment based on the method of smallest divisors is an apportionment by known and accepted standards and even though biased in favor of small counties, such bias is consistent with and in furtherance of unquestioned state policy. This policy is clearly indicated by the separate provision of the Alabama Constitution designed to protect the small counties by the original apportionment of one to each county and by the additional provision of the Constitution limiting one county to a single Senatorial district.

Disparities in population as may appear are inherent in any and all mathematical methods of apportionment. The question is the degree of disparity and whether or not such disparity can be justified on the basis of state policy, and thus avoid the onus of invidiousness.

The minor deviations in the Crawford-Webb Act from an apportionment under the method of smallest divisors is justified and equitable and based upon legislative judgment concerning the best method of guaranteeing protection against concentration of political power in the Alabama Legislature.

Many states are apportioned under provisions which put definite limitations upon the number of Representatives, of Senators, as the case may be, from any one political unit. We refer the Court to the dissenting opinion of Justice Frankfurter in *Baker v. Carr*, in which a tabulation is made from the *Book of the States 1962-63* of apportionment methods previously employed throughout the United States.

What is involved in this suit is an abstract question of political power concerning the structure and organization of the Alabama Legislature. It would be utterly impossible to argue the wisdom of the state policy with respect to allocation of power without making of the Court a forum for political debate.

Test for Invidiousness.

While the United States Supreme Court may not have established guide lines in some respects, it seems to us that it did speak clearly in *Baker v. Carr* on the following points:

1. That gross population variations are not invidious *per se*.

2. That such discriminations are not invidious if they can be shown to conform to a rational state policy designed to protect the rural interests of the state from domination by other segments of the economy.

3. That to constitute "invidiousness" any discrimination based on population must equate "no

policy" or else be totally irrational as to defy any conceivable state of facts upon which to justify the discrimination.

It is respectively submitted that when the above test is applied the Crawford-Webb Act was a valid and constitutional act of the Legislature and should not have been declared unconstitutional by the District Court.

The District Court was not justified in apportioning the legislature of Alabama by judicial decree. As stated by Mr. Justice Frankfurter in his dissenting opinion in *Baker v. Carr*, 82 S. Ct. 691 (1962):

> "In all of the apportionment cases which have come before the Court, a consideration which has been weighty in determining their non-justiciability has been the difficulty or impossibility of devising effective judicial remedies in this class of case. An injunction restraining a general election unless the legislature reapportions would paralyze the critical centers of a State's political system and threaten political dislocation whose consequences are not foreseeable. A declaration devoid of implied compulsion of injunctive of other relief would be an idle threat. Surely a Federal District Court could not itself remap the State: the same complexities which impede effective judicial review of apportionment a fortiori make impossible a court's consideration of these imponderables as an original matter. And the choice of elections at large as opposed to elections by district, however unequal the districts, is a matter of sweep-

ing political judgment having enormous political implications, the nature and reach of which are certainly beyond the informed understanding of, and capacity for appraisal by, courts. - - -

"Although the District Court had jurisdiction in the very restricted sense of power to determine whether it could adjudicate the claim, the case is of that class of political controversy which, by the nature of its subject, is unfit for federal judicial action."

CONCLUSION.

Many questions are presented in this case which were not considered by the Court in *Baker v. Carr*. More is involved here than the rights of parties litigant. The very foundation of state government is at stake. If this decision is allowed to stand, then the State of Alabama and its sister states are not sovereign states.

It is therefore respectfully submitted that this Court should reconsider the decision in *Baker v. Carr* and should return to the original constitutional proposition that courts do not interfere with the political structure of states government; that this Court should determine and decree that the District Court did not have power or authority to reapportion the Legislature of Alabama, or if it did have such power the Court was not justified in apportioning the Legislature of Alabama by judicial decree; that the "67-Senator Act" and the "Crawford-Webb Act" were valid and constitutional acts of the Alabama Legislature; and that a

justiciable controversy did not exist between the appellants and the appellees in this case, and the case should have been dismissed by the District Court.

It is respectfully submitted that this case should be reversed and remanded to the District Court with directions that the judgment be vacated and the case be dismissed; and, that an election be held in accordance with the existing laws of the State of Alabama for members of the Legislature in accordance with the Statutes of that state as they existed prior to the judgment of the District Court in this case, upon call by the Governor of Alabama.

Respectfully submitted,

JOSEPH E. WILKINSON, JR.,
310 Broad Street,
Selma, Alabama,

W. McLEAN PITTS,
15 Broad Street,
Selma, Alabama

THOMAS G. GAYLE,
1104½ Water Avenue,
Selma, Alabama,

RANKIN FITE,
Hamilton, Alabama,
Attorneys for Appellants, B. A. Reynolds, etc., et al.

I, W. McLean Pitts, one of the attorneys for the Appellants, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17 day of August, 1963, I served copies of the foregoing brief on the several Appellees and Cross-Appellants, by mailing copies in duly addressed envelopes, with first class postage, prepaid, to their respective attorneys of record as follows:

Charles Morgan, Jr.,
1512 Comer Building,
Birmingham, Alabama,

George Peach Taylor,
Brown-Marx Building,
Birmingham, Alabama,

Robert S. Vance,
1703 Comer Building,
Birmingham, Alabama,

Kenneth Howell,
Brown-Marx Building,
Birmingham, Alabama,

Robert M. Loeb,
Frank Nelson Building,
Birmingham, Alabama,

Richmond Flowers,
Attorney General of Alabama,
Montgomery, Alabama,

Jerome Cooper,
Brown-Marx Building,
Birmingham, Alabama,

David J. Van,
2100 Comer Building,
Birmingham, Alabama,

C. H. Erskine Smith,
First National Building,
Birmingham, Alabama,

John W. McConnell, Jr.,
1101 Merchants National Bank Building,
Mobile, Alabama.

~~Copy also served on~~:

W. McLean Pitts

W. McLEAN PITTS,
Attorney at Law,
15 Broad Street,
Selma, Alabama,
Of Counsel for Appellants, B. A. Reynolds, etc., et al.

APPENDIX "1".

FEDERAL STATUTES INVOLVED

28 U.S.C. §1343:

"*Civil rights and elective franchise.* The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

42 U.S.C. §1983:

"*Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. §1988:

"*Proceeding in vindication of civil rights.* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

DECLARATORY JUDGMENTS ACT

28 U.S.C. §2201:

"*Creation of remedy.* In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

APPENDIX "2".

UNITED STATES CONSTITUTION, amend. XIV, §§1 and 2:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives shall be apportioned among the several states, according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

APPENDIX No. 3.

TABLE OF STATES APPORTIONED UNDER PROVISIONS REQUIRING ONE SENATOR PER DISTRICT OR LIMITING A SENATORIAL DISTRICT TO ONE SENATOR

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	Nevada
California	New Jersey
Connecticut	New Mexico
Florida	South Carolina
Georgia	Texas
Idaho	Vermont
Iowa	Wyoming
Montana	

TABLE OF STATES
REQUIRING HOUSE REPRESENTATION OF NOT LESS THAN ONE PER COUNTY

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	New Mexico
Arkansas	New York
Hawaii	North Carolina
Idaho	North Dakota
Iowa	Ohio
Kansas	Pennsylvania
Mississippi	South Carolina
Missouri	Utah
Montana	West Virginia
New Jersey	Wyoming

APPENDIX No. 4.

COMPARISON: HOUSE APPORTIONMENT UNDER PROVISIONS OF ACT No. 91; METHOD OF EQUAL PROPORTIONS; AND METHOD OF SMALLEST DIVISORS

County	Crawford-Webb Act, Act 91	SDM	EPM
Jefferson	12	14	17
Mobile	6	7	8
Montgomery	4	4	4
Calhoun	3	3	3
Etowah	3	3	3
Madison	3	3	3
Tuscaloosa	3	3	3
Baldwin	2	2	1
Colbert	2	1	1
Cullman	2	1	1
Dallas	2	2	2
Houston	2	2	1
Lauderdale	2	2	2
Lee	2	2	1
Marshall	2	2	1
Morgan	2	2	2
Russell	2	1	1
Talladega	2	2	2
Walker	2	2	2

Balance of counties one each under all apportionment methods.

APPENDIX No. 5.

TABLE OF TEN INDUSTRIAL COUNTIES SHOWING CITY POPULATION AS PER CENT OF TOTAL COUNTY POPULATION

County	City	Population	Co. Pop.	% Rounded of Total Pop.
Jefferson	Birmingham	340,887	634,864	54%
Mobile	Mobile	202,779	314,301	64%
Montgomery	Montgomery	134,393	169,210	79%
Madison	Huntsville	72,365	117,348	61%
Tuscaloosa	Tuscaloosa	63,370	109,047	58%
Etowah	Gadsden	58,088	96,980	59%
Calhoun			95,878	39%
contiguous	(Oxford	3,603		
	(Anniston	33,657		
		37,260		

(Boundaries extended since census to increase population of Oxford)

Lauderdale			61,622	
Colbert			46,506	
			108,128	
contiguous	(Florence	31,649		
	(Sheffield	13,499		
	(Tuscumbia	8,994		
		54,142		50%
Morgan	Decatur	29,217	60,454	